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**JUL 02 2007**

**OFFICE OF PETITIONS**

In re Application of :  
Reinold et al. :  
Application No. 09/071046 : ON PETITION  
Filing or 371(c) Date: 05/04/1998 :  
Attorney Docket Number: :  
MCG00215 :

This is a decision on the Petition to Revive an Unintentionally Abandoned Application Under 37 C.F.R. § 1.137(b), filed September 20, 2005. The delay in treating this petition is regretted.

This Petition is hereby **granted**.

The above-identified application became abandoned for failure to timely and properly reply to a Decision of the Board of Patent Appeals and Interferences (Board), issuing a new ground of rejection under 37 CFR 41.50(b), mailed September 27, 2004. The Decision issuing the new ground of rejection set a two (2) month period for reply. Extensions of time were governed under 37 CFR 1.136(b). No reply having been received, and no claims having been allowed, the application became abandoned on November 28, 2004. A Notice of Abandonment was mailed February 16, 2005.

Applicants file the present petition; Amendment and Remarks, wherein Applicants' strongly disagree with the Board's decision.

37 CFR 41.50(b)(1) provides that the application will be remanded to the examiner for reconsideration if the appellant submits "an appropriate amendment" of the claims rejected by the Board, "or new evidence relating to the claims so rejected, or both." An amendment is "appropriate" under the rule if it amends one or more of the claims rejected, or substitutes new claims to avoid the art or reasons adduced by the Board. *Ex parte Burrowes*, 110 O.G. 599, 1904 C.D. 155 (Comm'r Pat. 1904). Such amended or new claims must be directed to the same subject matter as the appealed claims. *Ex parte Comstock*, 317 O.G. 4, 1923 C.D. 82 (Comm'r Pat. 1923). An amendment which adds new claims without either amending the rejected claims, or substituting new claims for the rejected claims, is not appropriate. The new claims will not be entered, and the examiner should return the application file to the Board for


consideration of the amendment as a request for rehearing under 37 CFR 41.50(b)(2), if it contains any argument concerning the Board's rejection.

MPEP 1214.01(I)

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the Reply in the form of an Amendment and Remarks; (2) the petition fee; and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3232.

This application is being referred to Technology Center AU2611 for and for appropriate action by the Examiner in the normal course of business on the Reply submitted with the Petition.

  
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Office of Petitions